

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>JOSHUA ALLEN BAUSCH Petitioner, vs. BRENT FLUKE, Warden and THE ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA Respondents.</p>	<p>4:22-CV-04026-KES</p> <p>ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING PETITION FOR CERTIFICATE OF APPEALABILITY</p>
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Petitioner, Joshua Allen Bausch, filed a pro se petition and amended petition for writ of habeas corpus under 28 U.S.C. § 2254. Dockets 1, 10. This matter was assigned to United States Magistrate Judge Veronica Duffy under 28 U.S.C. § 636(b)(1)(B), and this court's October 16, 2014, standing order. On March 16, 2022, respondents moved for judgment on the pleadings. Docket 4. On June 21, 2022, Magistrate Judge Duffy filed a report and recommendation that recommended dismissal with prejudice of all of Bausch's habeas claims because the state habeas court's factual findings are supported by the record, and that court reasonably applied federal law to Bausch's claims. Docket 13.

The court's review of a Magistrate Judge's report and recommendation is governed by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. The court reviews de novo any objections to the magistrate judge's recommendations with respect to dispositive matters that are timely made and specific. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). In conducting its de

novo review, this court may then “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994).

Bausch did not file objections to Magistrate Judge Duffy’s report and recommendation. After de novo review of the record, the court adopts the report and recommendation in full and dismisses Bausch’s petition.

“[A] state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition.” *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003) (citing 28 U.S.C. § 2253). “Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a [certificate of appealability] from a circuit justice or judge.” *Id.* at 335–36. A certificate may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(2). A “substantial showing” is one that demonstrates “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The court finds that Bausch fails to make a substantial showing that his constitutional rights were denied, and a certificate of appealability is denied as to all claims.

Thus, it is ORDERED

1. Magistrate Judge Duffy’s report and recommendation (Docket 13) is adopted in full.

2. Bausch's claims are dismissed with prejudice.
3. A certificate of appealability is denied.

Dated September 14, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE